



1 Conference and ADR Deadlines entered on November 22, 2017 (ECF 4) and the Clerk's Notice  
2 Continuing Case Management Conference dated February 6, 2018. (ECF 19.)

3 **1. Jurisdiction and Service**

4 There are no issues concerning personal jurisdiction, venue, or service of the Complaint. CIR  
5 brought this action under the Freedom of Information Act ("FOIA"), 5 U.S.C § 552(a)(4)(B), 5 U.S.C  
6 § 552(a)(6)(C)(i), 28 U.S.C. §§ 1331 and 1436, and 5 U.S.C. §§ 701–706. All parties have been  
7 served accordingly pursuant to Fed. R. Civ. P. 4(i)(1).  
8

9 **2. Facts**

10 On March 23, 2017, CIR submitted a FOIA request to the Department of Justice seeking  
11 information about the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") policies and  
12 procedures involving trace reports as well as aggregated information obtained from trace reports.  
13

14 CIR filed this action on November 13, 2017, seeking injunctive or other appropriate relief to  
15 compel the DOJ to disclose the requested records pursuant to 5 U.S.C. § 552(a)(4)(B). (ECF 1.)  
16 DOJ filed its answer to the complaint on December 29, 2017. (ECF 13.) DOJ finished processing  
17 CIR's expedited FOIA request and disclosed responsive records to CIR on January 31, 2018 and  
18 February 2, 2018. DOJ identified, reviewed, and released 154 responsive pages, some of which were  
19 redacted.  
20

21 Since the DOJ's second production on February 2, 2018, counsel for the parties have met and  
22 conferred a number of times to address questions about DOJ's production raised by plaintiff,  
23 including questions related to the scope of DOJ's search for responsive records and the basis for the  
24 DOJ's redactions. To date, no *Vaughn* Index has been provided. The parties plan to continue to  
25 meet and confer and hope to resolve the question of whether motion practice will be necessary by  
26 the date of the case management conference on March 1, 2018.  
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1           **3.     Legal Issues**

2           Whether DOJ has met its obligations to CIR under FOIA in connection with CIR's March  
3 23, 2017, request. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. § 16.5(e)(1)(iv).

4           **4.     Motions**

5           If motion practice is necessary, the parties hope to agree upon a schedule for summary  
6 judgment briefing by the date of the March 1, 2018, hearing, pending the Court's approval.

7           CIR reserves the right to seek discovery under Fed. R. Civ. P. 56(f) after DOJ files its motion  
8 for summary judgment and supporting declarations or indices pursuant to *Vaughn v. Rosen*, 484 F.2d  
9 820, 826-28 (D.C. Cir. 1973). CIR also reserves the right to move for attorney's fees if it is unable  
10 to reach an agreement with DOJ on this issue after the Court rules on the parties' dispositive motions.

11           DOJ reserves its right to oppose any request for discovery or attorney's fees to the extent that  
12 any such disputes arise.

13           **5.     Amendment of Pleadings**

14           Neither party anticipates amending its pleadings to add or dismiss claims or defenses.

15           **6.     Evidence Preservation**

16           Counsel have discussed evidence preservation and have explained this obligation to the  
17 parties. The parties acknowledge their respective duties to preserve relevant materials in accordance  
18 with applicable rules and case law.

19           **7.     Disclosures**

20           The parties agree that initial disclosures are not necessary in this case, as this is a FOIA action  
21 for which there is no need to exchange such disclosures.

22           **8.     Discovery**

23           To date, no discovery has been taken by any party, and the parties do not currently anticipate  
24 that discovery will be necessary in this case. Defendant notes that discovery is generally not  
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1 appropriate in FOIA actions. *See Lane v. Dep't of Interior*, 523 F.3d 1128, 1134 (9th Cir. 2008)  
2 (stating that in FOIA “cases courts may allow the government to move for summary judgment before  
3 the plaintiff conducts discovery”). CIR reserves the right to seek discovery pursuant to Federal Rule  
4 of Civil Procedure 56(f) after DOJ files its motion for summary judgment and accompanying papers.  
5 DOJ reserves its right to oppose any request for discovery.  
6

7 **9. Class Actions**

8 This case is not a class action.

9 **10. Related Cases**

10 Undersigned counsel are unaware of any related cases pending before this Court as defined  
11 by Local Rule 3-12.

12 **11. Relief**

13 CIR seeks injunctive relief with respect to the release and disclosure of all records responsive  
14 to its March 23, 2017 FOIA request. Defendant denies that CIR is entitled to the relief requested or  
15 to any relief whatsoever.  
16

17 **12. Settlement and ADR**

18 This case was assigned to the ADR Multi-Option Program, and the parties conferred about  
19 ADR processes in conformance with ADR Local Rule 3-5. An ADR phone conference was held on  
20 February 9, 2018 at 11:30AM. (ECF 20.) During this call, the parties stated that they requested to  
21 opt out of ADR because the parties have made progress in resolving the claims raised by Plaintiff  
22 and the case is not well suited to ADR resolution at this time. However, the parties also stated that  
23 they may consider ADR if they are unable to resolve all of the issues raised by Plaintiff's complaint.  
24

25 **13. Consent to Magistrate for All Purposes**

26 The parties consent to have a magistrate judge conduct all further proceedings including trial  
27 and entry of judgment.  
28

1           **14. Other References**

2           The parties agree that this case is not suitable for reference to binding arbitration, a special  
3 master, or the Judicial Panel on Multidistrict Litigation.

4           **15. Narrowing of Issues**

5           The parties have met and conferred in an attempt to narrow, if not resolve, the legal issues  
6 remaining in this case in advance of any summary judgment briefing. The parties hope that after  
7 reviewing the DOJ's full disclosure and possible *Vaughn* index, CIR will be able to inform the DOJ  
8 whether it intends to challenge any aspect of ATF's search, the redactions made pursuant to 5 U.S.C.  
9 § 552, or the withholding of any records. No party requests bifurcation of any issues, claims, or  
10 defenses.  
11

12           **16. Expedited Schedule**

13           The parties believe that any issues remaining after the parties' meet-and-confer efforts can  
14 be resolved on summary judgment. The expedited trial procedure is therefore inapplicable.  
15

16           **17. Scheduling**

17           No scheduling has been agreed upon at this time. The parties hope to have a tentative  
18 schedule agreed upon for summary judgment briefing, if necessary, to be approved by the Court at  
19 the case management conference.  
20

21           **18. Trial**

22           The parties anticipate that this entire case will be resolved by the Court on summary  
23 judgment, if not prior to the case management conference.

24           **19. Disclosure of Non-Party Interested Entities or Persons**

25           On February 21, 2018, CIR filed a Certification of Interested Entities or Persons as required  
26 by Local Rule 3-16 stating that, aside from the named parties, there is no interest to report. DOJ has  
27 not filed a Certification of Interested Entities or Persons because Local Rule 3-16 excuses  
28

1 government entities or their agencies from this requirement.

2 **20. Professional Conduct**

3 All attorneys of record have reviewed and agree to abide by the Guidelines for Professional  
4 Conduct for the Northern District of California.

5 **21. Other Matters As May Facilitate the Just, Speedy and Inexpensive Disposition**  
6 **of This Matter**

7 The parties raise no other matters at this time.  
8

9  
10 DATED: February 22, 2018

Respectfully submitted,

11 /s/ D. Victoria Baranetsky  
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15 ATTORNEY FOR PLAINTIFF  
16 CENTER FOR INVESTIGATIVE REPORTING

17 DATED: February 22, 2018

ALEX G. TSE  
Acting United States Attorney

19 /s/ Robin M. Wall  
20 Robin M. Wall  
Assistant United States Attorney

21 ATTORNEYS FOR DEFENDANT  
22  
23

24 **GENERAL ORDER NO. 45(X) CERTIFICATION**

25 I attest that I have obtained Robin W. Wall concurrence in the filing of this document.

26 /s/ D. Victoria Baranetsky  
27 D. Victoria Baranetsky  
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